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a fluid impermeable backsheet overlaid on said undergarment facing side of said central body fluid absorbent core and placed in register with said fluid permeable topsheet.

REMARKS

Favorable consideration of this application as presented herein is respectfully requested. Independent Claim 1 and new Claims 5-7 are pending in this application for consideration. No claims depend from any of these claims and Claims 2-4 have been cancelled.

In the Office Action, Claims 1-4 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,801,494 ("the '494 Patent"). In particular, Examiner notes that the '494 Patent discloses the "claimed invention with the exception of a dark colored topsheet". Additionally, the Examiner notes that the colors disclosed by the '494 Patent "are pastels such as peach and pink, but examples 1-5 show these relatively light colors as effectively masking stains caused by blood and discharge. The light colors disclosed by the ['494 Patent] effectively perform the same purpose as the dark colors of the claimed invention".

Similarly, Claims 1-4 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,188,625 ("the '625 Patent"). In particular, Examiner notes that the claimed invention discloses the claimed invention with the exception of a "dark colored topsheet". Further, Examiner states that the purpose of the '625 Patent, which discloses a sanitary napkin having a blue or green cover, is to "mask stains caused by menstrual fluids".

Additionally, Examiner objected to the specification as an improper “information disclosure statement”. A proper Information Disclosure Statement is submitted herewith pursuant 37 C.F.R. § 1.98.

Although the Applicant does not agree that the cited references, alone or in combination, render the claims unpatentable, Applicant has nevertheless rewritten dependent claims 2-4 in independent form as new Claims 5-7 to more clearly define the invention of the present application. As such, it is respectfully submitted that the claims are now in a condition for allowance.

Initially, we note that in order to establish a *prima facie* case of obviousness, “the prior art reference (or references when combined) must teach or suggest all the claimed limitations.” MPEP 2142. As Examiner notes, neither the ‘494 Patent nor the ‘625 Patent disclose, as required by Claims 1 (and new Claims 5-7), a “dark colored topsheet”. Accordingly, these references do not teach or suggest all of the claimed limitations as required under MPEP 2142. Therefore, a *prima facie* case of obviousness has not been made out and it is respectfully submitted that the rejection be withdrawn for this reason alone.

Additionally, Examiner bases her rejection on the position that the ‘494 Patent and ‘625 Patent teach the use of colored topsheets to “mask” menstrual stains. However, the purpose of the present invention is not to “mask” stains, but rather relates to the Rabbinic Decree concerning *Niddah*. We submit herewith a Rule 1.132 Declaration of Rabbi Shmuel Nieman in support of these remarks and amendments.

By way of background, it is first necessary to understand the factors considered by a Rabbi in determining whether a woman is a *Niddah*. In this regard, the Rabbinic Decree concerning *Niddah* provides that a woman will have the status of a *Niddah* if she experiences any vaginal staining, subject to certain exceptions. In this regard, a woman who experiences such staining will be a *Niddah* **unless**: the stain is smaller than the size of a *gris* (a Talmudic-era measurement approximately the size of a penny); the stain is discovered on a surface that is incapable of becoming *Tumay* (a prohibitive Scriptural status -- clothing, for example, is capable of becoming *Tumay* whereas the ground is not); the stain is blue, green or yellow; or the stain is found on a “colored” surface. See Rabbi Nieman Declaration, Par. 4. Thus, the only relevant inquiry in determining whether a stain would render a woman a *Niddah* is whether or not a stain falls under one of these exceptions.

Whether a sanitary napkin masks a stain as provided in the ‘625 Patent and ‘494 Patent is irrelevant to the present invention. Indeed, as Rabbi Nieman explains:

Whether a colored-surface masks or does not mask a stain is irrelevant to the determination of whether a stain falls under one of the enumerated exceptions to the Rabbinic Decree discussed above. Rather, the reason that “colored” surfaces are excluded from these rules stems from an association with the Scriptural laws on “leprosy” found on clothing and other objects. Thus, for example, many Rabbis would recognize that a large brown stain on a blue-green surface capable of becoming *Tumay* would render the woman a *Niddah*. However, the same Rabbis would recognize that the same stain, on a black, red or brown surface, on the other hand, would fall under the colored-surface exception to Rabbinic Decree, and thus the woman would not be rendered a *Niddah*.

See Rabbi Nieman Declaration, Par. 7. Thus, whether a “colored surface” masks a stain is irrelevant to the present invention. Rather, the relevant inquiry is whether a stain falls

under one of the above mentioned exceptions, and in particular, the “colored surface” exception.

As relevant to the present invention, the dark colored feminine hygiene pads (including, black, brown and red) would fall under the “colored surface” exception whereas the colored sanitary napkins (*i.e.*, green, blue, blue-green, pink, peach, other pastels and other light colors) of the ‘494 and ‘625 Patents would not.

Indeed, as Rabbi Nieman explains, a “significant number of Rabbis would rule that only dark colors, such as black, brown and red would fall under the colored-surface exception, as used in the context of the Rabbinic Decree concerning *Niddah*. Likewise, the same Rabbi would rule that other colors, such as blue, green, blue-green, pink, peach and other pastel and light colors, are non-colored surfaces as used in the context of the Rabbinic Decree discussed above.” Rabbi Nieman Declaration, Par. 6. Since the feminine hygiene pads of the present invention are dark colors, including, black, brown and red, a significant number of Rabbis would rule that stains appearing on the feminine hygiene pad of the present invention fall under the “colored-surface” exception as used in the context of the Rabbinic Decree concerning *Niddah*. The same Rabbis would also rule, on the other hand, that the same stains appearing on the sanitary napkins disclosed in the ‘494 Patent and ‘625 Patent (*i.e.*, the blue, green, blue-green, pink, peach and other pastel and light colored sanitary napkins) would render the woman a *Niddah*. Since the ‘494 Patent and ‘625 Patent teach away from the present invention, they do not render the claims obvious. MPEP 2145, Par. X.D.2.

Therefore, it is respectfully requested that the Section 103 rejection based upon combination of these references be withdrawn.

CONCLUSION


In light of the foregoing, it is respectfully submitted that the rejections be withdrawn and that all of the claims of the present application be allowed over the cited references.

A petition for a one month extension of time is included herewith. Also included herewith is an Information Disclosure Statement. A check in the amount of \$277.00 is also included herewith to cover the costs of the petition for a one month extension (\$55.00), the filing of the Information Disclosure Statement (\$180.00) and the filing of a fourth independent claim (\$42.00). No additional fees or extensions of time are believed to be due. However, authorization is given hereby to charge any deficiency or charge any additional extension of time fees necessary to preserve the pendency of the subject application, to Deposit Account No. 01-1785.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN
Attorneys for Applicant
90 Park Avenue
New York, New York 10016
(212) 697-5995

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By: 

Brian A. Comack
Registration No.: 45,353